

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

James Johnson,

Plaintiff(s),

vs.

C.O. Howard, et al.,

Defendant(s).

2:22-cv-00055-CDS-MDC

**ORDER DENYING MOTION FOR
 APPOINTMENT OF COUNSEL (ECF NO.
 80) UNDER FEDERAL RULE OF CIVIL
 PROCEDURE 62.1**

The Court entered judgment against pro se plaintiff James Johnson after it *sua sponte* dismissed one defendant and granted the other defendant's motion for summary judgment. See ECF Nos. 75 and 76. Plaintiff then filed both the instant *Motion for Appointment of Counsel* ("Motion") (ECF No. 80) and an appeal (ECF No. 81). Construing plaintiff's Motion liberally and considering the timing of his filings, he appears to be seeking appointment of an attorney to help him with the appeal. ECF No. 80. The Court DENIES the Motion.

Federal Rule of Civil Procedure 62.1 allows district courts to consider a "timely motion . . . for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the Court may: (1) defer... (2) deny... or (3) state either that it would grant the motion if the court of appeals remands... or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1. Given plaintiff's pending appeal, this Court is deprived of the power to grant the relief plaintiff seeks, even if it were inclined to do so. The Court declines to state that it would grant the Motion if it were remanded and further declines to state that the Motion raises a substantial issue. The Court instead denies the Motion pursuant to Federal Rule of Civil Procedure 62.1(a)(2). Plaintiff will not be prejudiced because he can

1 seek appointment of counsel in his Ninth Circuit case. If this case is remanded, he can refile his Motion
2 in this Court at that time.

3 IT IS ORDERED that plaintiff's *Motion for Appointment of Counsel* (ECF No. 80) is DENIED.

4 Date: September 16, 2024.

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Hon. Maximiliano D. Couvillier III
United States Magistrate Judge